

# Children's Law Center of Indiana



## Delinquency

11/13/2008

In **T.D. v. State**, 896 N.E.2d 547 (Ind. Ct. App. 2008), the Court granted the juvenile's petition for rehearing and reversed the adjudication finding her to be delinquent for having committed the offense of escape, a Class C felony if committed by an adult. In **T.D. v. State**, 890 N.E.2d 118 (Ind. Ct. App. July 9, 2008) the Court held that the juvenile had waived the issue presented on appeal in that she had failed to meet her burden of presenting a complete record with respect to the issues raised on appeal, and it affirmed her delinquency adjudication. Originally, in 2006, the juvenile court placed the juvenile on suspended commitment to Department of Correction (DOC) after she was adjudicated a delinquent in two separate causes, and ordered that she be placed at Ladoga Academy (Academy). Subsequently, a case manager and Academy staff member transported the juvenile to court for a hearing on a violation of her suspended commitment. The juvenile court ordered that she return to the Academy, but she refused to get on the bus and ran down the street. Her escorts reported the incident to the probation department and then returned to the Academy. The juvenile's mother later found the juvenile and returned her to the court. The State filed an information alleging that the juvenile was a delinquent child because she had committed two counts of escape. After an evidentiary denial hearing, and reviewing the parties' briefs, the juvenile court entered a true finding as to escape as a Class C felony. The juvenile appealed, arguing that the State had not shown that she had fled from lawful detention as defined by IC 35-44-3-5(a), when she refused to return to the Academy. The Court noticed that a necessary dispositional order from the earlier adjudication was missing from the record presented for review and ordered the juvenile to supplement the record with the needed order. The juvenile supplemented the appendix, but her supplement did not contain the requested order. In the petition for rehearing, the juvenile explained that at the time she was ordered to supplement the record on appeal, her counsel was out of communication because of the June 2008 flooding in Johnson County where her counsel's office is located, so the public defender's office attempted to comply with the Court's order, but did not provide the requested order. Because of these extenuating circumstances, the Court, by separate order, granted the juvenile's petition for leave to supplement the appendix with the requested order. The Court also granted her petition for rehearing.

**The State did not meet its burden of showing that, for the purposes of IC 35-44-3-5(a), the escape statute the juvenile was alleged to have violated, the Academy meets the applicable definition of unlawful detention in IC 35-41-1-18(a)(4), in that it is one of the facilities "for custody of persons alleged or found to be delinquent children."** *Id.* at 551. The juvenile contended that the State failed to present evidence to show that her placement at the Academy constituted lawful detention so as to support the finding that she had committed escape, as a Class C felony, if committed by an adult. *Id.* at 550. The Court reviewed IC 31-37-19-6(b) which describes the facilities in which a court may order persons alleged or found to be delinquent children to be detained, and concluded that in order to prove that the juvenile fled

from lawful detention, the State was required to show that she fled from commitment to the DOC, a juvenile detention facility, a shelter care facility, or a secure private facility. Id. The Court observed that (1) inasmuch as the State did not demonstrate what type of facility the Academy is and the dispositional order which initially placed the juvenile in the Academy shows that the juvenile court suspended the juvenile's commitment to the DOC, the subsequently suspended placement was not lawful detention under IC 31-37-19-6(b)(1)(A), (commitment to the DOC); (2) based on the State's admission in closing argument that the Academy is a non-secure facility, the Academy is not a juvenile detention facility; (3) considering that a secure private facility must be licensed to operate as such, the case manager testified that she did not know how the Academy is licensed, and the State presented no other evidence on that issue, the State did not show that the Academy is a secure private facility licensed by the State of Indiana; and (4) there is no evidence to suggest that the Academy is a shelter care facility. Id. at 551. Thus, according to the Court, because the record shows that the juvenile's placement at the Academy is not a commitment to the DOC, and the State did not present evidence to show that the Academy is a juvenile detention facility, a secure private facility, or a shelter care facility, the State did not meet its burden of showing that the Academy is one of the facilities "for custody of persons alleged or found to be delinquent children" as required by IC 35-41-1-18(a)(4) in order for it to meet the definition of unlawful detention. Id.